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SENATE BILL

No. 771

**Introduced by Senator Figueroa and Assembly Member John
Campbell**

(Principal coauthor: Senator Burton)

(Coauthor: Senator Karnette)

(Coauthors: Assembly Members Alquist, Aroner, Correa, Daucher,
Harman, Havice, Keeley, Richman, Shelley, Strickland, and
Strom-Martin)

February 23, 2001

An act to add Article 8 (commencing with Section 17590) to Chapter
1 of Part 3 of Division 7 of the Business and Professions Code, relating
to advertising.

LEGISLATIVE COUNSEL'S DIGEST

SB 771, as amended, Figueroa. Unsolicited and unwanted
telephone solicitations.

Existing law prohibits certain unfair business practices, including
certain advertising practices.

This bill would require the Attorney General, not later than January 1, 2003, to maintain a “do not call” list, containing the telephone numbers and ZIP Codes of residential or wireless telephone subscribers who do not wish to receive unsolicited and unwanted telephone calls from telephone solicitors. It would prohibit, subject to certain exceptions, a telephone solicitor from calling any telephone number, beginning on or after the 31st day after the then current “do not call” list becomes available, to, among other things, seek to offer a prize, to rent, sell, exchange, promote, gift, or lease any goods or services, to offer or solicit credit, to seek certain marketing information, or to seek to sell or promote any investment, insurance, or financial services. It would also prohibit persons who sell, lease, exchange, or rent telephone solicitation lists, except for directory assistance and telephone directories sold by telephone companies, from including in their lists telephone numbers that appear on the then current “do not call” list. Fees paid in connection with the “do not call list” by subscribers and solicitors would be deposited in the Special Telephone Solicitors Fund created by the bill.

Existing law makes it a crime to violate any of the provisions governing advertising. By adding these new prohibitions to those provisions, this bill would expand the scope of an existing crime, thereby imposing a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Article 8 (commencing with Section 17590) is
- 2 added to Chapter 1 of Part 3 of Division 7 of the Business and
- 3 Professions Code, to read:
- 4



1 Article 8. Unsolicited and Unwanted Telephone Solicitations

2
3 17590. (a) There is a compelling state interest to protect the
4 privacy of residential or wireless telephone subscribers who wish
5 to avoid unsolicited and unwanted telephone solicitations. For the
6 purposes of this article, a residential or wireless telephone
7 subscriber shall be referred to as a subscriber.

8 (b) The act of becoming a subscriber should not undermine or
9 lessen a person's right of privacy as guaranteed under Section 1 of
10 Article I of the California Constitution.

11 17591. (a) The Attorney General shall not later than January
12 1, 2003, maintain a "do not call" list, updated no less frequently
13 than quarterly, which shall set forth the California telephone
14 numbers and ZIP Codes, but not the names or addresses, of
15 subscribers, arranged by area code and numerical sequence, who
16 do not wish to receive unsolicited and unwanted telephone calls
17 from telephone solicitors as defined in Section 17592. The "do not
18 call" list shall indicate any exclusions designated by the subscriber
19 as provided in subdivision (b).

20 (b) Subscribers may place their telephone numbers and ZIP
21 Codes on the "do not call" list in the manner prescribed by the
22 Attorney General. The subscriber's placement on the "do not call"
23 list shall expire three years after the date on which the subscriber's
24 telephone number and ZIP Code first became available on the list
25 to telephone solicitors. The Attorney General shall triennially
26 charge these subscribers a fee not to exceed one dollar (\$1.00). A
27 subscriber may exclude from the coverage of the "do not call" list
28 telephone calls from entities identified by the subscriber. The
29 subscriber shall designate any exclusions in the manner prescribed
30 by the Attorney General.

31 (c) Telephone solicitors, as defined in Section 17592, shall
32 obtain copies of the "do not call" list by paying a fee to the
33 Attorney General in an amount not to exceed the costs incurred by
34 the Attorney General in the preparation, maintenance, production,
35 and distribution of that list. The Attorney General shall establish
36 a sliding scale fee schedule, charging a telephone solicitor with
37 more than 1,000 employees or independent contractors the
38 maximum fee and charging a telephone solicitor with fewer than
39 five full-time employees no fee. The Attorney General shall
40 provide a telephone solicitor the option of paying this fee on a

1 quarterly or annual basis. The Attorney General shall offer a
2 statewide list and shall also offer lists of areas within the state. The
3 determination of the number and definition of areas shall be within
4 the discretion of the Attorney General.

5 (d) The Attorney General shall utilize the best available,
6 cost-effective technology to ensure that subscribers may easily
7 place their telephone numbers on the “do not call” list. This
8 technology includes, but is not limited to, methods by which a
9 subscriber may effect placement on the list by using a
10 state-designated Internet Web site or a designated, statewide
11 toll-free telephone number. When the subscriber utilizes the
12 toll-free telephone number method, the subscriber shall call from
13 the telephone that is also the number to be included on the list. The
14 Attorney General shall also utilize the best available,
15 cost-effective technology to ensure that telephone solicitors may
16 easily obtain and manipulate the “do not call” list. This
17 technology may include, but is not limited to, methods that are
18 computer compatible and that allow the downloading of the list
19 and the sorting of the list by ZIP Code and that make the list
20 available on CD-ROM. The Attorney General may contract with
21 a private vendor to establish, maintain, and administer the “do not
22 call” list and a contract entered into in that regard shall include
23 appropriate provisions to protect the confidentiality of subscriber
24 information. The Attorney General may promulgate regulations to
25 implement the provisions of this article.

26 (e) It is the intent of the Legislature that the fees paid to the
27 Attorney General by telephone solicitors and subscribers be
28 utilized by the Attorney General in carrying out this article. The
29 Attorney General shall annually reduce the amount of the fee paid
30 by subscribers and telephone solicitors set forth in this section
31 based on revenue history and costs so that the fees do not exceed
32 the actual estimated costs in carrying out this article. The fees
33 obtained by the Attorney General shall be deposited in the Special
34 Telephone Solicitors Fund, which is hereby created. All moneys
35 in the fund shall be subject to annual appropriation in the Budget
36 Act.

37 (f) A person or entity that obtains a “do not call” list shall not
38 use the list for any purpose other than to comply with this article.
39 These unlawful purposes include, but are not limited to, causing
40 a subscriber to participate in and be included on, the “do not call”

list without the subscriber's knowledge or consent, selling or leasing the "do not call" list to a person other than a telephone solicitor, selling or leasing by a telephone solicitor of the "do not call" list, and a telephone solicitor, either directly or indirectly, persuading a subscriber with whom it has an established business relationship to place his or her telephone number on the "do not call" list, if the solicitation has the effect of preventing competitors from contacting that solicitor's customers.

17592. (a) For purposes of this article, a "telephone solicitor" means any person or entity who, on his or her own behalf or through salespersons or agents, announcing devices, or otherwise, makes or causes a telephone call to be made to a California telephone number that does any of the following:

(1) Seeks to offer a prize or to rent, sell, exchange, promote, gift, or lease goods or services or documents that can be used to obtain goods or services.

(2) Offers or solicits or seeks to offer or solicit any extension of credit for personal, family, or household purposes.

(3) Seeks marketing information that will or may be used for the direct solicitation of a sale of goods or services to the subscriber.

(4) Seeks to sell or promote any investment, insurance, or financial services.

(5) Seeks to make any telephone solicitation or attempted telephone solicitation as described in Section 17511.1.

(b) A person or entity does not *necessarily* qualify as a telephone solicitor if the products or services of the person or entity are sold or marketed by an independent contractor whose business practices are not controlled by the person or entity.

(c) Except for telephone calls described in subdivision (e), beginning on the 31st day after the current "do not call" list becomes available, no telephone solicitor shall call any telephone number on the then current "do not call" list and do any of the following:

(1) Seek to offer a prize or to rent, sell, exchange, promote, gift, or lease goods or services or documents that can be used to obtain goods or services.

(2) Offer or solicit or seeks to offer or solicit any extension of credit for personal, family, or household purposes.

1 (3) Seek marketing information that will or may be used for the
2 direct solicitation of a sale of goods or services to the subscriber.

3 (4) Seek to sell or promote any investment, insurance, or
4 financial services.

5 (5) Seek to make any telephone solicitation or attempted
6 telephone solicitation as described in Section 17511.1.

7 Between the time that a new “do not call” list becomes
8 available and the 31st day thereafter when it becomes effective,
9 telephone solicitors shall not call any telephone number on the
10 previously available “do not call” list, if there was a list.

11 (d) No person or entity that sells, leases, exchanges, or rents
12 telephone solicitation lists, except for directory assistance and
13 telephone directories sold by telephone companies or their
14 affiliates, shall include in those lists those telephone numbers that
15 appear on the current “do not call” list.

16 (e) Subdivision (c) shall not apply to any of the following:

17 (1) Telephone calls made in response to the express request of
18 the subscriber called, if the request was made prior to the telephone
19 call to the subscriber; an advertisement by the subscriber; or in
20 response to the express, written or electronically written
21 permission of the subscriber obtained pursuant to subdivision (f).
22 “Express request” or “prior written permission” does not include
23 any consent or permission included in any contract of adhesion.
24 “Express request” may include a telephone call from a person or
25 entity who has been provided the subscriber’s telephone number
26 and name as a referral from a solicitor with which the subscriber
27 has an established business relationship, if that solicitor has
28 obtained the subscriber’s express request for the referral. A
29 telephone call is presumed not to be made at the express request
30 of a subscriber if one of the following occurs, as applicable:

31 (A) The call is made 30 business days after the last date on
32 which the subscriber contacted a business with the purpose of
33 inquiring about the potential purchase of goods or services.

34 (B) The call is made 30 business days after the last date on
35 which the subscriber consented to be contacted.

36 (C) The call is made after the subscriber has requested that no
37 further telephone calls be made to him or her.

38 (D) The call is made 30 business days after a product or service
39 becomes available where the subscriber has made a request to the

1 business for that product or service that is not then available, and
2 requests a call when the product or service becomes available.

3 (2) Telephone calls made in connection with the collection of
4 a debt or the offer by a creditor to the subscriber of an extension
5 of credit to pay a delinquent obligation owed by the subscriber to
6 that creditor.

7 (3) Telephone calls that the subscriber excluded from the
8 coverage of the “do not call” list as provided in subdivision (b) of
9 Section 17591.

10 (4) Telephone calls made to a subscriber if the telephone
11 solicitor has an established business relationship with the
12 subscriber. As used in this article, “established business
13 relationship” means a relationship formed by a voluntary,
14 two-way communication between a telephone solicitor and a
15 subscriber with or without an exchange of consideration, on the
16 basis of an application, purchase, rental, lease, or transaction if the
17 relationship has not been terminated by the subscriber or the
18 solicitor. This term also includes a relationship with a nonprofit
19 entity formed through means such as previous donations to the
20 nonprofit entity or participation in or attendance at, events held by
21 the nonprofit entity. If a subscriber purchases or obtains a product
22 or service through a licensed agent or broker, for purposes of this
23 article an established business relationship is created with the
24 licensed agent or broker individually, apart from and in addition
25 to, any established business relationship that may have been
26 created by a licensed agent or broker acting on behalf of another,
27 and the licensed agent or broker is a telephone solicitor, as defined
28 in subdivision (a). Notwithstanding the provisions of this
29 paragraph, an established business relationship does not exist
30 between the subscriber and any separate legal entity associated
31 with the telephone solicitor not acting as an agent or vendor on
32 behalf of the telephone solicitor, as defined in subdivision (a),
33 unless the separate legal entity shares the brand name of a business
34 with which the subscriber has an otherwise established business
35 relationship. If a separate legal entity with which a subscriber does
36 not otherwise have an established business relationship telephones
37 a subscriber on the basis that the entity shares the brand name, and
38 the subscriber instructs the entity to place the subscriber on the
39 entity’s “do not call” list pursuant to Section 64.1200 of Title 47
40 of the Code of Federal Regulations and Part 310 of Title 16 of the



1 Code of Federal Regulations, that instruction shall be binding on
2 the entity with which the subscriber has the established business
3 relationship, with the entity that has the shared brand name, and all
4 other entities that share that brand name. Separate legal entities
5 include, but are not limited to, any parent company or entity, any
6 subsidiary company or entity, any partnership or copartner, any
7 joint venture or venturer, association member, or comember, or
8 any affiliated company or entity.

9 (5) Telephone calls made by an individual businessperson or a
10 small business if the individual businessperson or small business
11 employs no more than five full or part-time employees or
12 independent contractors, the individual businessperson or a
13 principal of the small business makes the telephone calls himself
14 or herself for the sale of goods or services offered by that
15 individual businessperson or small business, and the telephone
16 calls are made to subscribers within a 50-mile radius of the
17 location of the individual businessperson or small business. For
18 purposes of this section, the services offered by the individual
19 businessperson or small business cannot be telemarketing
20 services. For purposes of this section, those independent
21 contractors and employees with whom an individual
22 businessperson or a small business is required to have a written
23 independent contractor or employment agreement pursuant to a
24 regulatory scheme to ensure regulatory accountability of those
25 independent contractors or employees, are not counted against the
26 total referenced above.

27 (6) A telephone call made solely to verify that a subscriber, and
28 not an unauthorized third party, has terminated an established
29 business relationship.

30 (7) Telephone calls made by a tax exempt charitable
31 organization.

32 (f) Nothing in this section prohibits a telephone solicitor from
33 contacting by mail a subscriber whose telephone number appears
34 on the “do not call” list to obtain the subscriber’s express written
35 permission allowing the telephone solicitor to make the calls
36 described in subdivision (c). In any dispute regarding whether a
37 subscriber has provided this express written permission, the
38 telephone solicitor has the burden of proving that the subscriber
39 has provided this permission by producing the original or a



1 facsimile document, signed by the subscriber, evidencing that
2 permission.

3 17593. (a) The Attorney General, a district attorney, or a city
4 attorney may bring a civil action in any court of competent
5 jurisdiction against a telephone solicitor to enforce the article and
6 to obtain any one or more of the following remedies:

7 (1) An order to enjoin the violation.

8 (2) A civil penalty of up to five hundred dollars (\$500) for the
9 first violation and up to one thousand dollars (\$1,000) for a second
10 and each subsequent violation. The civil penalties obtained shall
11 be used to defray any administrative costs associated with the
12 implementation of this article.

13 (3) Any other relief that the court deems proper.

14 (b) Any person who has received a telephone solicitation that
15 is prohibited by Section 17592, or whose telephone number was
16 used in violation of subdivision (f) of Section 17591, may bring
17 a civil action in small claims court for an injunction or order to
18 prevent further violations. If a person obtains an injunction or
19 order under this subdivision and service of the injunction or order
20 is properly effected, a person who thereafter receives further
21 solicitations in violation of the injunction or order within 30 days
22 after service of the initial injunction or order, may file a subsequent
23 action in small claims court seeking enforcement of the injunction
24 or order and a civil penalty to be awarded to the person in an
25 amount up to one thousand dollars (\$1,000). For purposes of this
26 subdivision, a person's claims may not be aggregated to establish
27 jurisdiction in a court other than small claims court. For purposes
28 of this subdivision, a defendant is not required to personally
29 appear, but may appear by affidavit or by written instrument.

30 (c) The rights, remedies, and penalties established by this
31 article are in addition to the rights, remedies, or penalties
32 established under other laws.

33 (d) It shall be an affirmative defense to any action brought
34 under this article that the violation was accidental and in violation
35 of the telephone solicitor's policies and procedures and
36 telemarketer instruction and training.

37 17594. A "do not call" list prepared or maintained by the
38 Attorney General and any information submitted to the Attorney
39 General by a subscriber for use in preparing or maintaining that list
40 shall not be disclosed pursuant to a request made under Chapter 3.5

1 (commencing with Section 6250) of Division 7 of Title 1 of the
2 Government Code.

3 17595. If a federal agency, pursuant to paragraph (3) of
4 subsection (c) of Section 227 of Title 47 of the United States Code,
5 establishes a single national data base of telephone numbers of
6 subscribers who object to receiving telephone solicitations the
7 department shall include the part of that single national data base
8 that relates to California in the “do not call” list established by
9 Section 17591.

10 SEC. 2. The provisions of this act are severable. If any
11 provision of this article or its application is held invalid, that
12 invalidity shall not affect other provisions or applications that can
13 be given effect without the invalid provision or application.

14 SEC. 3. No reimbursement is required by this act pursuant to
15 Section 6 of Article XIII B of the California Constitution because
16 the only costs that may be incurred by a local agency or school
17 district will be incurred because this act creates a new crime or
18 infraction, eliminates a crime or infraction, or changes the penalty
19 for a crime or infraction, within the meaning of Section 17556 of
20 the Government Code, or changes the definition of a crime within
21 the meaning of Section 6 of Article XIII B of the California
22 Constitution.

